



## Memorandum

**To:** Planning and Economic Development Committee

**Via:** Gary Jackson, City Manager

**From:** Scott Shuford, Planning and Development Director

**Subject:** Fines Report

**CC:** Bob Oast, City Attorney  
Curt Euler, Assistant City Attorney

**Date:** October 11, 2006

NOTE: This report on fines represents a small amount of work performed by the author of this memorandum and a great deal of work performed by Assistant City Attorney Curt Euler; Mr. Euler's work is quoted extensively in this document without particular attribution and a general appreciation for his efforts is herein expressed.

**Background and limitations.** State law allows cities to enforce their ordinances relating to development through a variety of fines and penalties. Pursuant to N.C.G.S. 160A-365, all zoning and development ordinances may be enforced by any remedy set forth in N.C.G.S. § 160A-175. Per N.C.G.S. § 160A-175, a city can do the following (in any combination):

- a. Impose fines (civil penalties) for violations of its ordinances.
- b. Secure injunction and abatement orders for violations
- c. Charge a criminal misdemeanor or infraction as set forth in 14-4.
  1. Can be a Class 3 misdemeanor with a maximum fine of \$500.00.  
No fine shall exceed \$50.00 unless specified in the ordinance.
- d. Recover civil penalties in the civil debt if the person does not pay in the proscribed time.
- e. Seek Equitable Remedy in a court of competent jurisdiction.

The City of Asheville can therefore enforce an ordinance by one, two or all of the aforementioned remedies. In addition, the ordinance can state that each day of the violation constitutes a separate and distinct offense. It should be noted that, if an

ordinance is enforced by both civil and criminal penalties, all of the fines go to the local school board.

The only other limitations on setting of fines and penalties are due process considerations. The fine must be reasonable as it relates to the offense. Same theory applies to fees. See Homebuilder's Assn. v. City of Charlotte, 336 N.C. 37, 45 (1994). For example, the City probably would have a tough time justifying a \$10,000 fine for not having a dog license. The second question is the amount of due process a person gets to contest a fine. Since all notice of violations and zoning decisions can be appealed to the Board of Adjustment, zoning fines would not have a due process question. However, if the Board finds that there is a violation, the Board has no power to reduce the amount of fines specified by ordinance.

**Current circumstances.** The City currently has a civil penalty of \$100.00 per day for each day the violation continues (except for soil and erosion violations and sign ordinance violations). These penalties are applied only after the violator has received proper notice and has been given an opportunity to comply.

**Samples from other jurisdictions.** Based on Mr. Euler's research, here are fines for other jurisdictions in North Carolina. The listed fines are civil penalties. Where the jurisdiction also imposes criminal penalties, that information is noted.

Cary - \$100.00 first day, \$200.00 second day, \$300.00 third day, \$400.00 fourth day and each day after. Criminal penalties.

Chapel Hill – \$100.00 per day. Criminal penalties.

Charlotte – \$50.00 for first citation, \$200.00 for second citation, \$500.00 for each additional citation. Criminal penalties.

Fayetteville - \$100.00 per day, each day is a separate offense. Civil penalty only.

Greensboro - \$50.00 first day, \$100.00 second, \$200.00 third, \$500.00 for fourth and beyond. Criminal penalties. Also 15 days to appeal NOV to board of adjustment.

High Point - \$25.00 first day, \$50.00 second, \$100.00 third, \$200.00 fourth and beyond. Criminal penalties.

Raleigh - \$500.00 per day. Assesses a \$100 administrative fee for all violations. HRC violations - \$100.00 per day.

Wilmington - Between \$200 - \$500 per day depending on the type of violation.

Winston-Salem - \$100.00 per day. Criminal penalties.

**Recommendation.** Council members have expressed concerns about having enforcement measures sufficient to effectively and efficiently compel compliance with City ordinances. While there is no particular evidence of widespread code violation and relatively few “repeat offenders,” the violations that do occur are frequently high profile. As noted above, Asheville’s existing penalties are not only consistent with the way other cities sampled for this report handle violations of their ordinances, we may be somewhat on the low side for civil penalties for general ordinance violations. Staff consequently believes that a progressive civil penalty structure would go a long way in helping to bring appropriate attention to the City’s intent to enforce its ordinances. In addition, City Council may want to consider large one-time fines for violations where there can be no remedy (e.g., a person cuts down a tree or demolishes a historic structure). Staff has developed the following fine and replacement requirements for tree removal in areas subject to the proposed steep slope and ridgetop ordinance.

<b>FINES AND REPLACEMENT SCHEDULE FOR REMOVAL OF TREES AND OTHER SPECIFIED VEGETATION</b>		
Size of Tree or Area of Specified Vegetation Removed	Fine	Replacement Schedule
Each 100 Square Feet of Specified Vegetation Above 250 Square Feet	\$300	3 Rhododendron or Mountain Laurel (as applicable) per each 100 square feet (3 gallon minimum size)
4-8” tree (dbh)	\$300/tree	2 trees
8-12” tree (dbh)	\$500/tree	3 trees
12-16” tree (dbh)	\$700/tree	5 trees
16-20” tree (dbh)	\$1,000/tree	7 trees
Over 20” tree (dbh)	\$1,500/tree	9 trees

We recommend that we address civil penalties and enforcement efficiencies in the upcoming revisions to the UDO, including the replacement of the current fine structure with one that progresses for each day of continued violation (similar to those in Cary, Charlotte, Greensboro and High Point) and with additional penalties for situations where compliance is ineffective (specifically, mature tree removal or destruction of significant historic structures). The Planning and Legal departments would return with specific fine amounts and processes as part of the UDO revision program.